

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7649 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

LAXMANJI @ ANGI RAJUJI THAKOR

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 14/03/2000

ORAL JUDGEMENT

#. The District Magistrate, Mehsana, passed an order on August 20, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) detaining detinue under the provisions of the PASA Act.

#. The detaining authority considered the material placed before him by the sponsoring authority and came to conclusion that the detenue is a "bootlegger" and his activities are detrimental to public order. For coming to this conclusion, the detaining authority took into consideration 7 offences registered against the detenue under the Bombay Prohibition Act. The detaining authority also considered the statements of three anonymous witnesses and after recording satisfaction about the genuineness of the fear expressed by the witnesses, claimed privilege of not disclosing the identity of these witnesses. After considering the less drastic remedies, the detaining authority came to conclusion that the petitioner is required to be detained under the PASA Act in order to immediately prevent him from pursuing his illegal and anti-social activities.

#. The detenue has preferred this petition on various grounds. However, Mr. Prajapati, learned advocate appearing for the petitioner has restricted his arguments to delayed consideration/forwarding of representation made on behalf of the detenue by the detaining authority. He has drawn attention of this Court to Annexure : C, a representation made on behalf of the detenue on 31st August, 1999. A written communication received from the detaining authority is produced by Mr. Prajapati on record, which is dated 13th September, 1999, wherein the detaining authority has considered the representation and then observed that he is forwarding the representation to the higher authorities. Mr. Prajapati therefore, contended that the detaining authority has not forwarded the representation till 13th September, 1999. The authority had become functus officio and was only required to forward the representation which he should have done immediately. The delay in forwarding the representation has adversely affected the right of the detenue of making an effective representation and therefore, the continued detention of the detenue becomes illegal. The petition may therefore, be allowed.

#. Mr. K.T.Dave, learned AGP has opposed this petition. He states from his file that the representation dated 31st August, 1999 was received by the detaining authority on 6th September, 1999 and therefore, there is lapse of only 7 days in forwarding the representation.

#. Considering rival side contentions, it is undisputed fact that the detention order was passed on 20th August, 1999. By virtue of provisions of law, it was required to be approved by the government within 12 days of passing

of the order. It is nobody's case that it has not been approved within a stipulated time. The detaining authority therefore, became functus officio latest on or 2nd September, 1999. Representation is admittedly received by the detaining authority on 6th September, 1999 and forwarded on 13th September, 1999 as can be seen from the communication received by the learned advocate for the detainee. Thus, there is lapse of 6 days in forwarding representation. This delay has remained unexplained as the detaining authority has not filed any affidavit-in-reply. In this regard, a decision of this Court in the case of Urmilaben Natwarlal Gandhi v. Commissioner of Police, Surat City, as rendered in 1994 (2) GLH UJ 10 may be favourably considered, wherein the delay of 5 days in forwarding the representation by the detaining authority was considered sufficient for quashing the detention. This petition therefore, deserves to be allowed.

#. The petition is allowed. The impugned order of detention dated August 20, 1999 is hereby quashed and set aside. The detainee - Laxmanji @ Angi Rajuji Thakor, is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

pirzada/-